

STATE OF MICHIGAN
COURT OF APPEALS

JOHN MCMILLAN,

Plaintiff-Appellant,

v

DWAYNE L. DAVIS,

Defendant-Appellee,

and

LARRY B. RIVERS and RIVERS INVESTMENT
MANAGEMENT GROUP, INC., d/b/a RIVERS
INVESTMENT,

Defendants.

UNPUBLISHED

August 5, 2010

No. 288298

Wayne Circuit Court

LC No. 07-700673-NO

Before: METER, P.J., and MURRAY and BECKERING, JJ.

BECKERING, J. (*concurring*).

I concur in the result. In this landlord-tenant personal injury action, wherein plaintiff claims he injured his shoulder falling down his basement stairs due to a faulty handrail, the jury found for plaintiff with respect to both negligence and proximate cause, although it also found plaintiff to be 50 percent comparatively negligent. The jury awarded plaintiff \$4,639.83 in economic damages, which coincides with the parties' stipulated amount of plaintiff's medical expenses incurred in treating his shoulder, but nothing for noneconomic damages. The trial court denied plaintiff's motion for judgment notwithstanding the verdict (JNOV) or in the alternative a new trial. Plaintiff argues *inter alia* that the jury's award of economic damages for medical expenses incurred in treating his shoulder injury but nothing for noneconomic damages is "fatally inconsistent" and requires that the verdict be set aside. Plaintiff also argues that the jury's failure to award noneconomic damages was against the great weight of the evidence, warranting a new trial pursuant to MCR 2.611(A)(1)(e).

As noted by the majority, our Supreme Court in *Kelly v Builders Square, Inc.*, 465 Mich 29, 39; 632 NW2d 912 (2001), rejected "the principle that a jury behaves inconsistently when it awards medical expenses, but nothing for pain and suffering," because the plaintiff has the burden of proving each element of his case, and each damage category may have a distinct evidentiary basis. Consequently, the jury's verdict cannot be considered fatally inconsistent

based purely on the disparate nature of the awards. See *id.* A new trial may be granted, however, for one of the reasons stated in MCR 2.611(A)(1). *Kelly*, 465 Mich at 41.

Pursuant to MCR 2.611(A)(1)(e), the trial court may grant a new trial where the verdict is against the great weight of the evidence or is contrary to law. The trial court's ruling on a motion for a new trial is reviewed for an abuse of discretion. *Meyer v City of Ctr Line*, 242 Mich App 560, 564; 619 NW2d 182 (2000). "A trial court's determination that a verdict is not against the great weight of the evidence will be given substantial deference by the appellate court." *Arrington v Detroit Osteopathic Hosp Corp (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992). In reviewing the trial court's ruling, this Court must engage in an in-depth analysis of the record. *Id.*

Here, an in-depth review of the record reveals that the credibility of the witnesses for both plaintiff and defendant was hotly contested with respect to negligence, proximate cause, and damages. While the jury ultimately found that defendant's negligence proximately caused plaintiff damages, there was much dispute over both the origin and extent of plaintiff's shoulder problems, with evidence of at least one prior shoulder injury unrelated to the fall. Paying due deference to the jury's role in assessing credibility and weighing the evidence with respect to plaintiff's pain and suffering associated with the fall at issue, see *Kelly*, 465 Mich at 39-40, I cannot find that the trial court abused its discretion in denying a new trial under the particular facts of this case.

/s/ Jane M. Beckering